



1 Plaintiff Vaxiion Therapeutics, Inc. (“Vaxiion”), Defendant Foley & Lardner LLP (“Foley”),  
2 and Third Party EnGeneIC PTY Ltd. (“EnGeneIC”) (collectively, the “Parties”), through their  
3 respective counsel, hereby stipulate and jointly move the Court as follows:

4 WHEREAS, Vaxiion filed a complaint against Foley on December 28, 2006 in the San Diego  
5 County Superior Court alleging, among other things, claims for legal malpractice in connection with  
6 the prosecution of foreign patent applications pertaining to minicell technology (the “Action”);

7 WHEREAS, Foley removed the Action to the United States District Court for the Southern  
8 District of California on February 9, 2007;

9 WHEREAS, Vaxiion alleges that, as a result of Foley’s negligence, it has lost certain foreign  
10 patent rights in minicell technology;

11 WHEREAS, EnGeneIC has certain patent rights that may be of interest to Vaxiion;

12 WHEREAS, in the course of the Early Neutral Evaluation Conference overseen by Magistrate  
13 Judge Ruben B. Brooks, Vaxiion and Foley have discussed having a meeting with EnGeneIC to  
14 consider a possible business arrangement between Vaxiion and EnGeneIC that could lead to a  
15 resolution of the dispute between Vaxiion and Foley and a settlement of Vaxiion’s claims against  
16 Foley;

17 WHEREAS, notwithstanding that EnGeneIC and Vaxiion may be direct competitors in certain  
18 fields relating to minicells, EnGeneIC, through its counsel, has agreed to engage in such discussions  
19 with Vaxiion and Foley, and Vaxiion and Foley, through their respective counsel, have agreed to  
20 engage in such discussions with EnGeneIC and each other, but only on the condition that such  
21 discussions be treated as confidential on the one hand by Vaxiion and Foley (and also as between  
22 Vaxiion and Foley) as set forth in this Joint Motion and, on the other hand, by EnGeneIC as set forth in  
23 a separate Confidentiality and Non-Disclosure Agreement, and that nothing said or produced in such  
24 discussions be used in any subsequent proceeding on the one hand by Vaxiion and Foley (and also as  
25 between Vaxiion and Foley) as set forth in this Joint Motion and, on the other hand, by EnGeneIC as  
26 set forth in such separate Confidentiality and Non-Disclosure Agreement; and

1 WHEREAS, Vaxiion and Foley agree that any concepts or information disclosed to them by  
2 EnGeneIC before or after the date of this Joint Motion about the minicell technology or about  
3 EnGeneIC's plans to use the minicell technology are confidential and proprietary, and that the  
4 disclosure of such confidential and proprietary information would be damaging to EnGeneIC if it  
5 became public or made available to a further competitor; and that the use of such confidential and  
6 proprietary information of EnGeneIC by Vaxiion and/or Foley would be damaging to EnGeneIC.

7 NOW, THEREFORE, in consideration of the Parties' willingness to meet, the Parties stipulate  
8 and agree, and move the court, as follows:

9 1. For purposes of this Agreement, "EnGeneIC Proprietary information" includes, but is  
10 not limited to, ideas, concepts, development plans for existing, new or improved products or processes,  
11 data, formulae, techniques, designs, sketches, know-how, plans, drawings, specifications, samples,  
12 reports, findings, studies, unpublished U.S. or international patent applications (and their drafts), or  
13 inventions relating to minicell technology, and includes all information relating to minicells disclosed  
14 by EnGeneIC to Vaxiion in any form whether or not identified as proprietary by EnGeneIC.

15 2. Vaxiion and Foley agree to treat as confidential EnGeneIC Proprietary information  
16 exchanged during any meetings contemplated by this Agreement. Vaxiion and Foley further agree  
17 that, unless ordered to do so by a court of competent jurisdiction, Vaxiion or Foley may not disclose or  
18 use EnGeneIC Proprietary information without the express written consent of EnGeneIC.

19 3. Vaxiion and Foley agree that this Agreement, any action taken pursuant to this  
20 Agreement, any information exchanged or statements made at or in connection with any discussions  
21 contemplated by this Agreement, and/or any EnGeneIC Proprietary information disclosed during any  
22 meetings contemplated by this Agreement, shall not be offered or received in evidence in any legal  
23 action or proceeding as an admission of liability, wrongdoing, or for any other purpose by either  
24 Vaxiion or Foley. Moreover, Vaxiion and Foley agree that EnGeneIC Proprietary information  
25 exchanged pursuant to or during the meetings shall not be offered or received into evidence before any  
26 administrative or judicial body as evidence of the patentability, enforceability, priority, or validity of  
27

1 any of EnGeneIC's current or future patent applications or patents pertaining to minicell technology,  
 2 including without limitation, in proceedings such as district court litigations, or patent office  
 3 proceedings such as interferences, reexaminations, protests, cancellations or oppositions.

4 4. Vaxiion and Foley agree that this Agreement, any action taken pursuant to this  
 5 Agreement, and/or any information exchanged or statements made at or in connection with any  
 6 discussions contemplated by this Agreement shall not be offered or received in evidence in any legal  
 7 action or proceeding as an admission of liability, wrongdoing, or for any other purpose by either  
 8 Vaxiion or Foley.

9 5. Nothing hereinabove contained shall deprive Foley and Vaxiion of the right to use or  
 10 disclose any information:

11 a) which is, at the time of the disclosure, known to the trade or the public, as  
 12 evidenced by written or other tangible evidence;

13 b) which becomes at a later date known to the trade or the public, as evidenced by  
 14 written or other tangible evidence, through no fault of Foley or Vaxiion, and then only after  
 15 said later date;

16 c) which is possessed by Foley or Vaxiion, as evidenced by Foley or Vaxiion's  
 17 written or other tangible evidence, before receipt thereof from the meetings; PROVIDED  
 18 however that nothing in this subsection c) shall affect any information possessed by Foley  
 19 prior to or acquired after the present Joint Motion due to Foley's prior or concurrent  
 20 representation of EnGeneIC, which information shall continue to be kept confidential and  
 21 subject to the attorney client privilege as otherwise required by any and all code(s) of  
 22 professional responsibility by which Foley is bound;

23 d) which is received by Foley or Vaxiion pursuant to any valid method of  
 24 discovery in a legal proceeding, except where such information is covered by a protective  
 25 order, in which case use of such information is limited by the terms of such protective order;  
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1 e) which is disclosed to Foley or Vaxiion in good faith by a third party who is  
2 lawfully in possession of such information and is under no duty to maintain the confidentiality  
3 of such information; or

4 f) which was developed by Foley or Vaxiion independently of information  
5 received under this Agreement, as evidenced by written or other tangible evidence, without  
6 violating any obligations contained in this Agreement.

7 6. EnGeneIC does not by this Agreement agree to submit to the jurisdiction of the United  
8 States District Court for the Southern District of California for the purpose of enforcing the terms of  
9 the proposed Order Protecting Confidentiality of Discussions.

10 IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by a duly  
11 authorized representative.

12 **Vaxiion Therapeutics, Inc.**

13 By: \_\_\_\_\_  
14 Name: \_\_\_\_\_  
15 Title: \_\_\_\_\_  
16 Date: \_\_\_\_\_

17 **EnGeneIC Pty. Ltd.**

18 By: \_\_\_\_\_  
19 Name: \_\_\_\_\_  
20 Title: \_\_\_\_\_  
21 Date: \_\_\_\_\_

22 **Foley & Lardner LLP**

23 By: \_\_\_\_\_  
24 Name: \_\_\_\_\_  
25 Title: \_\_\_\_\_  
26 Date: \_\_\_\_\_

1 IT IS NOW HEREBY STIPULATED AND AGREED, by the Parties' request, through their  
2 counsel, as follows:

3 1. For good cause shown, the Court grant the Parties' Joint Motion, and enter an order  
4 setting forth the terms stipulated to above to protect the confidentiality of discussions.

5 February \_\_, 2008

Respectfully Submitted,

6  
7 s/Scott B. Garner  
Scott B. Garner

8 Howrey LLP  
9 Attorneys for Defendant Foley & Lardner LLP

10 s/Karen R. Frostrom  
Karen R. Frostrom

11 Thorsnes Bartolotta McGuire  
12 Attorneys for Plaintiff Vaxiion Therapeutics, Inc.

13 s/Jorge Goldstein  
14 Jorge Goldstein

15 Sterne Kessler, Golstein & Fox P.L.L.C.  
16 Attorneys for Third Party EnGeneIC PTY PLC

17  
18 **ORDER**

19 The foregoing is approved and shall be the Order of the Court.

20  
21 DATED: May 16, 2008

22   
United States Magistrate Judge